IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11505 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI MANORBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11505 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR D.P. JOSHI, ASSTT.GOVERNMENT PLEADER for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 31/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 24.11.2001 passed by the District

Magistrate, Sabarkantha in exercise of powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority observed that the activities of the petitioner are prejudicial to the maintenance of supplies of food-grains like wheat and rice under the public distribution system. After recording satisfaction that less drastic remedy is not posssible to be resorted to and in order that the petitioner may be immediately prevented from pursuing his illegal activities, he is required to be detained under PBM, the impugned order came to be passed.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. However, learned Advocate Mr. Prajapati appearing for the petitioner has restricted his argument to the fact that a representation made on behalf of the detenu addressed to the detaining authority was considered and rejected on merits by the detaining authority after it had become functus-officio i.e. after the approval of the detention order by the Government. Giving details Mr. Prajapati submitted that the order of detention was passed on 24.11.2001 and it was executed on 26.11.2001. The said order was approved by the State Government on 4.12.2001. A representation was made on behalf of the detenu on 1.12.2001, which was received by the detaining authority on 6.12.2001 and it was rejected by the detaining authority on 11.12.2001. Mr. Prajapati submitted that the detaining authority was not required to consider the representation on merits and reject the same as he had become functus-officio and was therefore, required to forward the same to the Government for consideration. That having not been done, right of the detenu of making an effective representation in infringed and his continued detention would be vitiated. He therefore urged that the petition may be allowed. To support his contention, he has relied on the decision in Vallabhbhai Maganbhai Bamaniya Vs. State of Gujarat, reported in 2000 (3) GLR 2662.

3. Learned Assistant Government Pleader Mr. D.P. Joshi who represents respondent Nos. 1, 2 and 3 has opposed to this petition. Respondent No.4 Union of India is represented by Mrs. Dawawala. Affidavits-in-reply are filed on behalf of the respondents.

4. Having regard to the contentions raised before this Court, learned AGP Mr. Joshi was not in a position to controvert the factual data given by Mr. Prajapati.

The fact therefore remains that the order was approved by the Government on 4.12.2001. The representation was received on 6.12.2001 and was rejected on 11.12.2001 by the detaining authority. The detaining authority at that point of time had become functus-officio and could not have considered the representation on merits. Instead the authority has considered the representation on merits and rejected the same. There is nothing to indicate that the said representation was even thereafter forwarded to the Government. The right of the detenu of making an effective representation is therefore infringed and his continued detention would therefore be vitiated, as held by this Court in the case of Vallabhbhai Maganbhai Bamaniya Vs. State of Gujarat (supra) wherein similar view is taken. In view of the above situation, the order cannot be permitted to stand. The petition therefore deserves to be allowed and the same is allowed.

5. Order of detention dated 24th November, 2001 passed by the District Magistrate, Sabarkantha is quashed and set aside. Detenu Rameshbhai Manorbhai Patel be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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